



UNDERGROUND STORAGE TANK CORRECTIVE ACTION SECTION INFORMAL AND FORMAL APPEALS GUIDANCE DOCUMENT

(Revised December 2005)

NOTICE OF RIGHT TO INFORMAL APPEAL

Pursuant to Arizona Revised Statute (A.R.S.) § 49-1091, an eligible person who undertakes corrective action pursuant to A.R.S. § 49-1052 subsection I, or an owner or operator, has 30 days to request an informal appeal after receipt of an Arizona Department of Environmental Quality (ADEQ) notice identifying an interim decision or determination. Interim decisions are those decisions identified in A.R.S. § 49-1091 subsections A and G, which includes ADEQ approvals, disapprovals or notices of deficiency of site characterization reports, corrective action plans, work plans and case closure requests; and determination or confirmation of releases.

The informal appeal must be in writing, identify the portions of the interim decision or determination with which you disagree, and explain the basis of your disagreement. You may file the informal appeal using the form on the reverse side of this document titled "Informal Appeal Form - Notice of Disagreement." As part of the informal appeal, you may request a meeting with ADEQ to attempt to resolve the disagreement. If a meeting is requested, ADEQ will contact you within 30 days to schedule the meeting.

If you file an informal appeal, ADEQ will review its interim decision or determination and issue a written final decision or determination within 45 days; or if a meeting has been requested, within 15 days after the meeting is held. By operation of law, if ADEQ does not issue a written final decision or determination within 45 days after receiving your informal appeal, or within 15 days after the meeting described above, (whichever date is later), then the interim decision or determination becomes the final decision or determination without further notice to you (see Notice of Right to Formal Appeal below).

Please be advised that if you do not file an informal appeal, the interim decision or determination automatically becomes ADEQ's final decision or determination without further notice to you. In this case, by operation of law, the effective date for the final decision or determination is 45 days after the date that you received the interim decision or determination (see Notice of Right to Formal Appeal below).

NOTICE OF RIGHT TO FORMAL APPEAL

Pursuant to A.R.S. §§ 49-1091(E) and 41-1092 et seq., once a decision or determination has become a final agency decision or determination (in writing or by operation of law), that decision or determination is an Appealable Agency Action that will determine certain legal rights, duties, and privileges within the meaning of A.R.S. § 41-1092(3). A final decision or determination is administratively appealable before the Office of Administrative Hearings (OAH).

To obtain an administrative hearing on a final decision or determination, you must file a Notice of Appeal with ADEQ within 30 days of the effective date of the final decision or determination. The effective date is the date you receive the written final decision or determination; or, in certain cases, the statutory prescribed date that the interim decision or determination otherwise becomes a final decision or determination by operation of law (e.g., if you did not file an informal appeal; or if ADEQ fails to issue a timely final decision or determination in response to your informal appeal). The Notice of Appeal, if any, shall contain the following information:

1. Your name and mailing address. You shall notify ADEQ of any change in your address within five (5) days after the change.
2. Identification of your status as an UST owner, UST operator, or person voluntarily taking corrective action, pursuant to A.R.S. §§ 49-1016(C)(4) or 49-1052(I).
3. Identification of the ADEQ final decision or determination that is the subject of appeal.
4. A concise statement of the reasons for your appeal.

You shall file the Notice of Appeal with ADEQ. It is requested that the Notice of Appeal be filed at the following address:

Judith Fought, Hearing Administrator
ADEQ Office of Administrative Counsel
1110 West Washington Street
Phoenix, Arizona 85007

The Notice of Appeal shall be filed by mailing the Notice via certified mail (return receipt requested), or by personally delivering the Notice to the Hearing Administrator. Please send a copy of the Notice of Appeal via U.S. Mail to the Office of the Attorney General, Environmental Enforcement Section Administrative Appeals Desk, located at 1275 West Washington Street, Phoenix, Arizona 85007.

An administrative hearing will typically be held within 60 days after the Notice of Appeal is filed. The OAH will conduct the hearing. If you wish to try to settle the matter before the administrative hearing is held, you may file a request for an informal settlement conference with the Hearing Administrator no later than 20 days before the OAH hearing date. ADEQ will hold the settlement conference within 15 days after receiving the request. Filing an informal settlement request does not toll the OAH hearing date.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANK (UST) PROGRAM

Informal Appeal Form
Notice of Disagreement

In accordance with Arizona Revised Statute (A.R.S.) §49-1091, an eligible person may informally appeal an ADEQ interim decision or determination and file a written notice of disagreement within 30 days of receiving the Department's interim decision or determination. Please use this form to file a notice of disagreement with ADEQ. Also, please indicate below if a meeting is requested.

Is a meeting requested? : ☐ Yes ☐ No

If requesting a meeting, do you plan on having an attorney attend the meeting?
☐ Yes ☐ No

If a meeting is requested, UST Section staff will contact you to schedule a meeting. The ADEQ requests that you attach a list of the individuals who will be attending the meeting with you.

(ADEQ USE ONLY)

Date Received: _____

UST Ref. #: _____

Date of Meeting: _____

Time of Meeting: _____

UST FACILITY INFORMATION:

UST Facility Name

Street Address

City _____ Zip Code _____ County _____

Facility ID: 0-00 _____

LUST File: _____

SAF Application #: _____ - _____.
(if applicable)

APPELLANT INFORMATION:

Name of person making the appeal

Signature of eligible person _____ Date _____

Street Address

City _____ State _____ Zip Code _____ County _____ Telephone Number _____

In accordance with A.R.S. §49-1091, the following are the only persons that can file a notice of disagreement. Please indicate the appropriate affiliation of the person making the appeal.

☐ UST Owner

☐ UST Operator

☐ UST SAF Volunteer
[as defined in A.R.S.
§49-1052(I)]

TYPE OF APPEAL (check one or more of the applicable categories which are the subject of disagreement):

☐ UST owner/operator determination (legal) ☐ site characterization decision (technical) ☐ technical SAF decision (technical)

☐ confirmed release determination (technical) ☐ corrective action plan decision (technical) ☐ SAF cost issues relating to preapproval, direct pay, or reimbursement application (financial)

☐ LUST case closure (technical) ☐ work plan decision (technical)

Based on ADEQ Interim Determination Letter: Dated: _____ From: _____
Name of ADEQ staff

IMPORTANT DOCUMENTATION:

In accordance with A.R.S. §49-1091, you are **required** to provide a description of the specific portions of the interim decision or determination with which there is disagreement. Also include all applicable supporting documentation (rationale, justification, etc.) that has not previously been submitted to ADEQ. This Notice of Disagreement and all related documentation should be sent to the appropriate address listed below according to the correct category.

State Assurance Fund (SAF) Informal Appeals:

ADEQ State Assurance Fund Section
1110 West Washington Street
Phoenix, AZ 85007

Non-SAF Informal Appeals:

ADEQ UST Corrective Action Section
1110 West Washington Street
Phoenix, AZ 85007

[revised December 2005]